IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4378 OF 2005

Dr. Prabhakar Janardan Joglekar ..Petitioner.

Versus

Divisional Joint Registrar, Co-op. Societies Mumbai Division & Ors. ..Respondents.

Shri V.K. Chowdhari for the Petitioner.

CORAM : S. A. BOBDE, J.

DATED : 07TH JULY, 2005.

P.C.:

1. The petitioner has challenged the order dated 08.02.2005 passed by the Divisional Joint Registrar, Co-op. Societies, Kokan Division, Navi Mumbai with regard to the recovery certificate issued by the Respondents Co-operative Housing Society against the petitioner. It appears that the recovery certificate dated 22.01.2004 was issued in respect of dues payable by the petitioner for a sum of Rs. 26,145/- alongwith other charges total Rs. 33,592/- as apparent from

Exh. ‘D’ vide page 76 of this petition.

2. Aggrieved thereby, the petitioner filed a revision before the Divisional Joint Registrar Co-op. Societies, Konkan Division, Navi Mumbai, who has dismissed the revision. Dr. Chowdhari, learned counsel for the petitioner very strongly urged that the impugned order passed by the revisional authority is illegal since the petitioner has deposited an amount of Rs. 45,000/- on behalf of one Bhide, which ought to have been taken into account. It is contended that the petitioner was entitled to get interest on the amount deposited by him on behalf of said Bhide. According to Dr. Chowdhary, the Society should have therefore, adjusted the amount of interest towards the dues for which the petitioner is charged. There is no merit in this contention. The amount is said to have been paid for and on behalf of Bhide. There is no reason why it should be adjusted against the amount due from the Petitioner.

3. The other contention is that a dispute being CCV-547/2002, filed by the Petitioner is pending against the demand made by the Society. Admittedly there is no injunction against the Society,

restraining it from recovering their dues under the impugned recovery certificates. The revisional Court has found that there is no stay granted to the petitioner in the said dispute by which the society is restrained. The revisional court has found that the respondent society is empowered to recover service charges and has not charged any interest as claimed by the petitioner. The revisional authority appears to have accepted the contention of the respondent society that there is no stay granted in the suit filed by the petitioner and that the society has not charged any compound interest as is alleged by the petitioner.

4. In this view of the matter, there is no merit in this petition, which is hereby dismissed. Needless to say that the other dispute bearing C.C.No. 547/2002, shall be decided on its own merits in accordance with law.

5. I also see no merit in the contention raised on behalf of the petitioner that the recovery proceedings under section 101, being summary in nature cannot be resorted to when a dispute filed by the Petitioner is pending agianst the Society.

07.07.2005 (S.A.BOBDE,J.)

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